In the event the trial judge came to the conclusion that he could not accept the plaintiff's evidence that both the defendants were present when the plaintiff was attacked though he was apparently in some doubt in the case of the second defendant. He took the view that only the anonymous Malays were present and that it was they who inflicted the injuries upon the plaintiff but that they had been employed and instigated to do so by the defendants. On that he gave judgment for the defendants but deprived them of their costs on the ground that they "are not blameless in the matter".

Against that decision the plaintiff has now appealed.

With the greatest respect I am unable to follow the trial judge's course of reasoning.

In the first place I would observe there is not a scrap of evidence directly to support his conclusions. The plaintiff's story is that it was the defendants who inflicted the injuries upon him. The defendants' story is that they were not there. Nobody has said a word to the effect that it was the anonymous Malays who inflicted the injuries. Indeed it is not unfair to say that the judge based himself very much on the probabilities of the case. One of the arguments he relied on was that the head injuries on the plaintiff were inflicted by an axe, that it is a matter of common knowledge that in the State of Kelantan there is a small class of professional criminals who undertake for hire or reward to injure other people with axes, that these professional criminals are of the Malay race, and that therefore because these were axe injuries it was more probable that the injuries inflicted on the plaintiff were inflicted by Malays than that they were inflicted by Sikhs.

Now, it may be true that in the State of Kelantan there are Malay criminals of the sort described. After all even in Eden there was a serpent. And it may be, though this may be less certain, that the activities of these persons are such as to exclude any very strong possibility of axe injuries being inflicted by other types of persons. I do not profess to know and I express no opinion.

I would, however, observe that the whole structure of what would otherwise be an impeccable syllogism is based on what would seem to be a misunderstanding of the medical evidence.

The doctor who examined the plaintiff did not say that in her opinion the head injuries on the plaintiff were inflicted with an axe. What she said was they could have been inflicted by an axe. Now, it is clear from her evidence that in the case of neither of the injuries was there a corresponding fracture of the skull. As a matter of ordinary commonsense (I am not attempting to take judicial notice of anything beyond the most elementary facts of life) it is possible, though not perhaps very probable, that a man could be struck a violent blow on the head with the edge of an axe without a fracture of the skull resulting, but it would seem to me altogether beyond any reasonable bounds of probability that a man could suffer two such blows without at least one of them producing a fracture of the skull. The truth, of course, is that the doctor was not very closely examined on the point and in particular her attention was not invited to the passage in *Taylor's Medical Jurisprudence* (10th Edition: Volume I, p. 290) where it is said that in the case of a scalp wound it is difficult to differentiate between a wound caused by a blunt instrument and an incised wound. Had this point been put to the lady it is to my mind very likely that she would have said the scalp wounds although they could have been caused by an axe were not necessarily so caused and could have been caused by blows with a stick or other blunt instrument.

In all the circumstances of the case I think that the interests of justice demand that the case be retried and I would accordingly allow the appeal. The costs of the first trial and of the appeal should abide the result of the second trial.

Syed Sheh Barakbah J.: I have had the opportunity of reading the judgment written by the learned Chief Justice. I entirely concur with his judgment and the order proposed and have nothing to add.

Azmi J.: I have had the advantage of reading the judgment prepared by the President of the Court of Appeal. I agree with it and have nothing to add.

Appeal allowed. Retrial ordered.

Solicitors: *H. L. Wrigglesworth; Lovelace & Hastings.*

SIN GEE SENG v. WAI WAH TRADING CO.

[O.C.J. (Ambrose J.) November 25, 1961]

[Singapore — Suit No. 788 of 1959]

Possession of goods obtained by fraud — Factors Act, 1889, ss.9, 2(1) — Subsequent sale — Title of innocent purchasers — Retaking of goods by original sellers — Trespass — Conversion.

The sole proprietor of Seng Hong Trading Co. agreed to buy 200 cases of plate glass from the defendants and to pay cash on delivery. When the goods were delivered, Seng Hong Trading Co. tendered a cheque, which was accepted on the understanding that the property in the goods was not to pass until the cheque had been honoured. The plaintiffs bought the goods from Seng Hong Trading Co. in good faith and without notice of any right of the defendants in respect of the goods. The cheque was dishonoured and the property in the goods did not pass to Seng Hong Trading Co. The defendants, on discovering the whereabouts of the goods, entered into the plaintiffs' store without their permission and removed some of the goods, and later caused the police to remove the remaining goods. The plaintiffs brought this action to recover damages for (1) trespass to land, (2) trespass to goods, and (3) conversion.

Held: (1) although the defendants' consent to Seng Hong Trading Co. obtaining possession of the goods was induced by fraud, the fraud did not nullify the consent as no fundamental mistake was induced by the fraud, and Seng Hong Trading Co. obtained possession of the

goods "with the consent of the seller" within the meaning of section 9 of the Factors Act, 1889;

(2) under section 9 of the Act, the sale by Seng Hong Trading Co. to the plaintiffs had the same effect as if Seng Hong Trading Co. were mercantile agents in possession of the goods with the consent of the owners; and under section 2(1) of the Act the sale was, therefore, as valid as if Seng Hong Trading Co. had been expressly authorized by the defendants to make the sale; accordingly, Seng Hong Trading Co. gave the plaintiffs a good title to the goods in question;

(3) the defendants had no right to enter the plaintiffs' premises and committed trespass to the plaintiffs' land;

(4) the defendants committed trespass to the goods as they wrongfully interfered with the plaintiffs' possession of them by removing them from the plaintiffs' store;

(5) as the plaintiffs had the right of possession and a right of property in the goods at the time they were removed by the defendants, the defendants clearly committed conversion of the goods, and the plaintiffs were entitled to sue the defendants for it.

Cases referred to:—

(1) *Du Jardin v. Beadman Bros. Ltd.*, [1952] 2 All E.R. 160.

(2) *Patrick* v. *Colerick* (1838), 3 M. & W. 483.

(3) *Lancashire and Yorkshire Railway* v. *MacNicoll* (1919), 88 L.J. (K.B.) 601, 605.

(4) *Jarvis* v. *Williams*, [1955] 1 All E.R. 108, 111.

ACTION.

L. A. J. Smith for the plaintiffs.

Tan Peng Khoo for the defendants.

Ambrose J.: This action was brought to recover damages for (1) trespass to land, (2) trespass to goods and (3) conversion. There was a fourth claim alternative to the second and third: this was for the return of the goods or their value, alleged to be $14,000, and damages for their deterioration and detention.

The material facts alleged in the statement of claim were these. The plaintiffs are furniture contractors, and were at all material times the owners of 200 cases of plate glass stored in their store at 65-U Bartley Road. On the 26th December, 1958, the defendants' servants or agents wrongfully and forcibly broke into the plaintiffs' store and removed 183 of those cases: and the defendants caused the police to go to the store and remove the remaining 17 cases. The plaintiffs by a letter dated the 6th January, 1959, demanded the return of the 200 cases. The defendants refused to comply with the demand and wrongfully detained the goods. The plaintiffs suffered loss and damage as a result.

The material facts alleged in the defence were these. At all material times the 200 cases of plate glass were the property of the defendants. They were cheated of the goods by one Tan Kiat Cheng on the 22nd and 24th December, 1958. They made a report to the police on the 24th December. On the 26th December, 122 out of the 200 cases were found to be stored at 65-U Bartley Road. The defendants' manager and employees entered the store with the leave and licence of the store-keeper. They removed 105 out of the 122 cases; these were taken over by the police, pending criminal proceedings against Tan Kiat Cheng; and the police removed the remaining 17 cases from the store. The defendants did not wrongfully detain the 200 cases. The plaintiffs did not suffer loss and damage.

In their reply the plaintiffs pleaded that they had no knowledge of the alleged cheating of the defendants by Tan Kiat Cheng and that the 200 cases of plate glass were bought by them in the usual course of business.

The first matter which I had to consider was whether the property in the 200 cases of plate glass passed from the defendants to Tan Kiat Cheng, the sole proprietor of Seng Hong Trading Co. The evidence of Quan Ying Lum, the defendants' manager, was as follows. On the 20th December, 1958, Tan Kiat Cheng ordered 79 cases of drawn sheet glass and 121 cases of window glass, agreeing to pay $14,788.73 in cash for the goods on delivery. The goods were duly delivered at No. 2 Padang Jeringau, the store of Seng Hong Trading Co., on the 22nd December, 1958. Quan demanded payment, but Tan put him off, saying that the goods had to be checked by his clerk, that his clerk was not in, and that he would ring up Quan on the return of his clerk. On the 23rd December at 8 a.m. Quan went to see Tan. Tan told Quan that the goods had not been checked because the clerk had not yet returned. Quan waited for one hour. Tan said that he could not pay for the goods until they were checked. Quan returned to his shop and telephoned Tan several times, and was told on each occasion that the clerk had not come back. Finally, Tan told Quan to see him again on the 24th December. Quan did so. Tan gave him a cheque. Quan refused to accept it, saying that payment was to be made in cash. Tan suggested that it was safer to take a cheque because of the risk of robbery. Quan took the cheque on the understanding that he would take back the goods if the cheque was not honoured. The bank did not accept the cheque because the amount written in figures differed from the amount written in words. Another cheque was obtained from Tan. This was dishonoured by the bank. Quan obtained the cheque from the bank and went to look for Tan but could not find him in his office. Quan went to the store of Seng Hong Trading Co., and found that the goods had been removed. He then went to the Central Police Station and made a report. On the 26th December he went to Tan's office. There a young man told him that Tan had run away and that the glass was in Bartley Road.

The evidence of Quan satisfied me that payment was to be made in cash on delivery of the goods; that the property in the goods was not to pass until payment in cash had been made; that Quan took the cheque from Tan on the understanding that the property in the goods was not to pass to Tan until the cheque had been honoured by the bank; and that, as the cheque was dishonoured, the property in the goods did not pass to Tan.

The second matter which I had to consider was whether Tan, the sole proprietor of Seng Hong Trading Co., gave the plaintiffs a good title to the 200 cases of plate glass. It was contended by counsel for the defendants that, as Tan was not the owner of the goods when he sold them to the plaintiffs, the plaintiffs acquired no better title to the goods than Tan had. Counsel relied on section 21(1) of the Sale of Goods Act which reads as follows:

"Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell."

This subsection, however, is subject to section 25(2) of the Act; and by section 21(2) of the Act nothing in the Act shall affect the provisions of the Factors Acts. Section 9 of the Factors Act, 1889, is wider than section 25(2) of the Sale of Goods Act, as the latter omits the words "or under any agreement for sale, pledge or other disposition thereof." Section 9 of the Factors Act, 1889, reads as follows:

"Where a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods.....the delivery or transfer by that person.....of the goods.....under any sale, pledge or other disposition thereof, or under any agreement for sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods.....with the consent of the owner."

The powers of a mercantile agent with respect to disposition of goods are to be found in section 2(1) of the Factors Act, 1889, which provides as follows:

"Where a mercantile agent is, with the consent of the owner, in possession of goods.....any sale, pledge or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same."

Counsel for the plaintiffs relied on section 9 of the Factors Act, 1889. It is to be noted here that section 1(2) of the Factors Act, 1889, provides:

"A person shall be deemed to be in possession of goods.....where the goods are in his actual custody....."

In my judgment, Tan agreed to buy the goods from the defendants and obtained possession of the goods by deceiving them. The question was whether in those circumstances he obtained possession of the goods "with the consent of the seller" within the meaning of section 9 of the Factors Act, 1889. Counsel for the plaintiffs relied on the case of *Du Jardin* v. *Beadman Bros., Ltd.* [1], in which Sellers J., decided, on the facts of that case, that, though possession of a motor car was obtained by larceny by a trick by a person who had agreed to buy it, possession was obtained "with the consent of the seller" within the meaning of section 9 of the Factors Act, 1889. I agreed with the view of Sellers J. which may be stated thus: the seller's consent to the buyer's obtaining possession of the goods is valid, although the consent is induced by fraud, provided the fraud does not nullify the consent by inducing a fundamental mistake, for example, a fundamental mistake as to the identity of the buyer. In my judgment, although the defendants' consent to Tan's obtaining possession of the goods was induced by fraud, the fraud did not nullify the consent, as no fundamental mistake was induced by the fraud. I therefore held, on the facts of the present case, that Tan obtained possession of the goods "with the consent of the seller" within the meaning of section 9 of the Factors Act, 1889.

The evidence of Tan Soo Kuan, a partner of the plaintiff firm, and the three receipts and three invoices produced by him satisfied me that the plaintiffs bought the goods for $14,016.20 (which was the price after deducting a discount of 10% for cash) from Seng Hong Trading Co. in good faith and without notice of any right of the defendants in respect of the goods. In my judgment, therefore, the sale by Seng Hong Trading Co. to the plaintiffs had the same effect as if Seng Hong Trading Co. were mercantile agents in possession of the goods with the consent of the owners; and the sale was, therefore, as valid as if Seng Hong Trading Co. had been expressly authorized by the defendants to make the sale. I came to the conclusion, accordingly, that Seng Hong Trading Co. gave the plaintiffs a good title to the 200 cases of plate glass.

The third matter which I had to decide was whether the defendants committed trespass to the plaintiffs' land. I found that the store at 65-U Bartley Road was the plaintiffs' store. The evidence of the plaintiffs' store-keeper was as follows. The defendants' manager, Quan, and about 20 other persons came to the store on the 26th December, 1958, in three lorries and three cars. One of them demanded the key to the store. He replied that he could not hand over the key without the permission of his employers. The man insisted that the key should be handed over to him, and the others joined in the demand. He gave them the key as he was alone and some of them had hammers and iron bars. They opened the store with the key and removed 183 out of the 200 cases of plate glass; about 40 cases out of the 183 had been previously unpacked by the store-keeper on the instructions of the plaintiffs; even the unpacked glass was removed by the defendants' manager and the men who came with him. The defendants' manager, Quan, said that he assumed that the store was the store of Seng Hong Trading Co.; that he asked the store-keeper to open the door for him to go into the store and have a look inside; that the goods belonged to the defendants; and that he intended to take the goods no matter

what anybody said. I was satisfied, on the evidence of Tan Soo Kuan, that on the 26th December there was a signboard bearing the words "Sin Gee Seng Furniture" at the store. I came to the conclusion that Quan told the Court a lie when he said that the only words on the signboard at the store were "Furniture Co., Ltd." in Chinese characters, and that he did not know that the store was the plaintiffs' store. I accepted the evidence of the store-keeper and found that he did not give the defendants' manager and the others permission to enter the plaintiffs' store.

It was contended by counsel for the defendants that the defendants had a right to enter the plaintiffs' premises to retake their own goods. Counsel relied on the case of *Patrick* v. *Colerick* [2]. This is authority for the proposition that if a person unlawfully takes the goods of another and puts them on his own land, the owner of the goods is entitled to enter immediately on the land for the purpose of retaking his own goods. I failed to see how the case cited by counsel supported his contention: as in the present case the plaintiffs did not unlawfully take the goods of the defendants and were the owners of the goods. In my view, the defendants had no right to enter the plaintiffs' premises and committed trespass to the plaintiffs' land.

The next matter which I had to decide was whether the defendants committed trespass to goods. As the property in the goods had passed to the plaintiffs, the defendants had no right to retake them. I held that the defendants committed trespass to goods as they wrongfully interfered with the plaintiffs' possession of them by removing them from the plaintiffs' store.

The last matter which I had to decide was whether the defendants committed conversion of the goods. Here I must refer to *Lancashire and Yorkshire Railway* v. *MacNicoll* [3], where Atkin J. said (at page 605):

> "It appears to me plain that dealing with goods in a manner inconsistent with the rights of the true owner amounts to a conversion, provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right."

I must also refer to *Jarvis* v. *Williams* [4], where Evershed M.R. (at page 111) approved the general rule stated in 33 *Halsbury's Laws* (2nd Edition) 62, para. 98:

> "In order to maintain an action of trover or detinue, a person must have the right of possession and a right of property in the goods at the time of the conversion or detention;"

By taking the goods as their own, the defendants clearly showed an intention to deny the owners' right or to assert a right inconsistent with it. The defendants' refusal to return the goods on demand made by the plaintiffs' letter of the 6th January, 1959, was further evidence of the conversion. As the plaintiffs had the right of possession and a right of property in the goods at the time they were removed by the defendants, the defendants clearly committed conversion of the goods, and the plaintiffs were entitled to sue the defendants for it.

There was a dispute as to the quantity of plate glass which was removed from the plaintiffs' store by the defendants. I accepted the evidence of the store-keeper that just before the defendants' manager arrived there were about 150 cases together with unpacked glass from 40 cases inside the store, and about 10 cases in the compound of the store. I did not believe the evidence of the defendants' manager, Quan, that there was no unpacked glass in the store when he entered it. He impressed me unfavourably as a witness and I came to the conclusion that he was a liar. The store-keeper, on the other hand, impressed me favourably and I regarded him as an honest witness. I was satisfied, on the evidence of the store-keeper and Tan Soo Kuan, who also impressed me as a truthful witness, that there were only 17 cases and no unpacked glass in the store when Tan Soo Kuan arrived at the store with the police, after the loaded lorries had left, on receiving a telephone call from the store-keeper. The police removed the 17 cases on the 30th December, 1958, as a result of the activities of the defendants, together with 59 empty cases and some loose planks. There was no evidence that all the 59 empty cases and loose planks were originally part of the 200 cases which were purchased by the plaintiffs from Seng Hong Trading Co. I came to the conclusion that the defendants removed 133 cases and the contents of 40 cases from the store together with 10 cases from the compound of the store. I held that the defendants were liable for conversion of the 143 cases and the contents of the 40 cases which were removed by them, and also the 17 cases which were removed by the police as a result of their activities.

For the above reasons, I gave judgment for the plaintiffs, awarding $1,000 as damages for trespass to lands and trespass to goods and $14,000 as damages for conversion, and ordered the defendants to pay the plaintiffs the costs of the action.

Judgment for the plaintiffs.

Solicitors: *L. A. J. Smith; Oehlers & Choa.*